

AMENDED IN ASSEMBLY JUNE 22, 2009

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 321

Introduced by Senator Benoit

February 25, 2009

An act to amend Section 53753 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 321, as amended, Benoit. Local government: assessments: election requirements.

(1) Articles XIII C and XIII D of the California Constitution generally require that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution.

Existing statutory law provides notice, protest, and hearing procedures for the levying of new or increased assessments, fees, and charges by local government agencies pursuant to Articles XIII C and XIII D of the California Constitution.

This bill would prescribe other requirements relating to the ballot envelope, the tabulation of ballots, and the preservation of ballots to the public as disclosable public records. By creating new requirements for property assessments conducted by counties and cities, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 53753 of the Government Code is
2 amended to read:

3 53753. (a) The notice, protest, and hearing requirements
4 imposed by this section supersede any statutory provisions
5 applicable to the levy of a new or increased assessment that is in
6 existence on the effective date of this section, whether or not that
7 provision is in conflict with this article. Any agency that complies
8 with the notice, protest, and hearing requirements of this section
9 shall not be required to comply with any other statutory notice,
10 protest, and hearing requirements that would otherwise be
11 applicable to the levy of a new or increased assessment, with the
12 exception of Division 4.5 (commencing with Section 3100) of the
13 Streets and Highways Code. If the requirements of that division
14 apply to the levy of a new or increased assessment, the levying
15 agency shall comply with the notice, protest, and hearing
16 requirements imposed by this section as well as with the
17 requirements of that division.

18 (b) Prior to levying a new or increased assessment, or an existing
19 assessment that is subject to the procedures and approval process
20 set forth in Section 4 of Article XIII D of the California
21 Constitution, an agency shall give notice by mail to the record
22 owner of each identified parcel. Each notice shall include the total
23 amount of the proposed assessment chargeable to the entire district,
24 the amount chargeable to the record owner's parcel, the duration
25 of the payments, the reason for the assessment and the basis upon
26 which the amount of the proposed assessment was calculated, and
27 the date, time, and location of a public hearing on the proposed
28 assessment. Each notice shall also include, in a conspicuous place
29 thereon, a summary of the procedures for the completion, return,
30 and tabulation of the assessment ballots required pursuant to

1 subdivision (c), including a statement that the assessment shall not
2 be imposed if the ballots submitted in opposition to the assessment
3 exceed the ballots submitted in favor of the assessment, with ballots
4 weighted according to the proportional financial obligation of the
5 affected property. An agency shall give notice by mail at least 45
6 days prior to the date of the public hearing upon the proposed
7 assessment. On the face of the envelope mailed to the record owner,
8 in which the notice and ballot are enclosed, there shall appear in
9 substantially the following form in no smaller than 16-point bold
10 type: “OFFICIAL BALLOT ENCLOSED.”

11 (c) Each notice given pursuant to subdivision (b) shall contain
12 an assessment ballot that includes the agency’s address for receipt
13 of the ballot and a place where the person returning the assessment
14 ballot may indicate his or her name, a reasonable identification of
15 the parcel, and his or her support or opposition to the proposed
16 assessment. Each assessment ballot shall be in a form that conceals
17 its contents once it is sealed by the person submitting the
18 assessment ballot. Each assessment ballot shall be signed and either
19 mailed or otherwise delivered to the address indicated on the
20 assessment ballot. Regardless of the method of delivery, all
21 assessment ballots shall be received at the address indicated, or
22 the site of the public testimony, in order to be included in the
23 tabulation of a majority protest pursuant to subdivision (e).
24 Assessment ballots shall remain sealed until the tabulation of
25 ballots pursuant to subdivision (e) commences, provided that an
26 assessment ballot may be submitted, or changed, or withdrawn by
27 the person who submitted the ballot prior to the conclusion of the
28 public testimony on the proposed assessment at the hearing
29 required pursuant to subdivision (d). An agency may provide an
30 envelope for the return of the assessment ballot, provided that if
31 the return envelope is opened by the agency prior to the tabulation
32 of ballots pursuant to subdivision (e), the enclosed assessment
33 ballot shall remain sealed as provided in this section.

34 (d) At the time, date, and place stated in the notice mailed
35 pursuant to subdivision (b), the agency shall conduct a public
36 hearing upon the proposed assessment. At the public hearing, the
37 agency shall consider all objections or protests, if any, to the
38 proposed assessment. At the public hearing, any person shall be
39 permitted to present written or oral testimony. The public hearing
40 may be continued from time to time.

(e) (1) At the conclusion of the public hearing conducted pursuant to subdivision (d), an impartial person designated by the agency who does not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment. For the purposes of this section, an impartial person ~~may include~~ *includes*, but is not limited to, the clerk of the agency. ~~An impartial person does not include the person or entity that~~ *If the agency uses agency personnel for the ballot tabulation, or if the agency contracts with a vendor for the ballot tabulation and the vendor or its affiliates participated in the research, design, engineering, public education, or promotion of the assessment.* ~~The assessment,~~ the ballots shall be unsealed and tabulated in public view at the conclusion of the hearing so as to permit all interested persons to meaningfully monitor the accuracy of the tabulation process.

(2) The governing body of the agency may, if necessary, continue the tabulation at a different time or location accessible to the public, provided the governing body announces the time and location at the hearing. The impartial person may use technological methods of tabulating the assessment ballots, including, but not limited to, punchcard or optically readable (bar-coded) assessment ballots. During and after the tabulation, the assessment ballots and the information used to determine the weight of each ballot shall be treated as disclosable public records, as defined in Section 6252, and equally available for inspection by the proponents and the opponents of the proposed assessment. The ballots shall be preserved for a minimum of two years, after which they may be destroyed as provided in Sections 26202, 34090, and 60201.

(3) In the event that more than one of the record owners of an identified parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the identified parcel shall be allocated to each ballot submitted in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the agency by documentation provided by those record owners.

(4) A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in

1 its favor, weighting those assessment ballots by the amount of the
2 proposed assessment to be imposed upon the identified parcel for
3 which each assessment ballot was submitted.

4 (5) If there is a majority protest against the imposition of a new
5 assessment, or the extension of an existing assessment, or an
6 increase in an existing assessment, the agency shall not impose,
7 extend, or increase the assessment.

8 (6) The majority protest proceedings described in this
9 subdivision shall not constitute an election or voting for purposes
10 of Article II of the California Constitution or of the Elections Code.

11 SEC. 2. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 a local agency or school district has the authority to levy service
14 charges, fees, or assessments sufficient to pay for the program or
15 level of service mandated by this act, within the meaning of Section
16 17556 of the Government Code.